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Jan. 4, 1995

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Amendment of Part 90 of the  
Commission's Rules to Facilities  
Future Development of SMR Systems  
in the 800 MHz Frequency Band

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PR Docket No. 93-144

FCC MAIL ROOM

Implementation of Sections 309(j)  
of the Communications Act -  
Competitive Bidding 800 MHz SMR

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GN Docket No. 93-253

COMMENTS

I. INTRODUCTION

Genesee Business Radio Systems, Inc. (GBRS) is a small business that sells, service and rents dispatch radio equipment in the 450 and 800 MHz frequency bands. GBRS is affiliated with Allstate Mobile Communications, Corp. (AMC) and Licciardi Radio Communications, Inc. (LRC) that combined revenue and personnel are around \$1,500,000 collectively and employ under 15 people.

Introduction

GBRS provides sales and service of 800 MHz dispatch radio equipment to over 160 customers with over 1700 radios in the Rochester, New York area along with LRC. Our main 800 MHz repeater site is Pinnacle Hill that covers the metropolitan area better than any other site. We provide interconnect service to any dispatch user who requests this extra feature and we restrict telephone service to only local phone numbers throughout the dispatch area.

Our location is within the Canadian border area which limits our available SMR channels from 280 to 60 channels. Our area has been wait listed with no available spectrum from the original grant date April 15, 1985.

Our prime license is WBN431 Allstate Mobile Communications which is 10 SMR channels that is loaded and awaits additional inter-category channels from the Industrial pool, which was stopped by the Federal Communications Commission (FCC) 800 MHz license freeze of August 9, 1994.

The FCC is removing the public domain of private frequency spectrum for private use of industry, business and commerce toward only commercial allocation, which is not in the best public interest. Large wireless systems will all go through a "turnstile" node switch from place to place to place that fees will be collected at each "turnstile".

049

Jan. 4, 1995

## II. DISCUSSION

### A. CHANNEL ASSIGNMENT AND SERVICE AREAS

#### 1. Spectrum Designated for MTA Licensing

We do NOT agree that sufficient spectrum in the top 150 cities of MTAs exist to auction. Industrial Telecommunications Association (ITA) has searched the FCC data base to find that the top 175 cities in the USA are without 800 MHZ SMR spectrum available for new systems.

We believe that the FCC should auction only 100 channels to the top 2 bidders, and retain as an equal playing field the other 100 channels to the incumbent, traditional SMR providers for expansion and growth.

#### 2. Size of MTA Spectrum Blocks and Spectrum Aggregation Limit

The rules were developed in 1974 for the Business Radio Service to create for the first time trunked service via Specialized Mobile Radio (SMR) to provide better frequency use in 800 MHZ rather than shared individual systems on one frequency.

Each year since 1985 the FCC has stated at several Comm Expo conferences during the FCC Open Forum that it is pleased that the industry has utilized the spectrum to provide the public, industry and service corporations with traditional 800 MHZ SMR systems of dispatch and interconnect service with excellent results.

Why does the FCC need to hinder and surely limit the future of this SMR service by auctioning off unavailable spectrum for the right to provide wide-area Enhanced Specialized Mobile Radio (ESMR) service? We believe the request of NEXTEL is the only reason to do this auction.

If the auction is permitted, then the auction would be better served in BTA rather than MTA; or to get away from Rand McNally references, to the top 150 major cities with a 40 mile radius service area, as was the basic of original single ownership area rule.

The four groups of 50 channels for auction should only have the top 2 bidders with awards, so that the remaining 100 channels will remain for the incumbent, traditional SMR 800 MHZ licensees for an equal playing field, instead of all 200 channels being awarded to wide-area ESMR bidders and others.

#### 3. Licensing of Non-Contiguous Local Channels

Licensing should be in accordance with existing SMR rules with protection from interference by DHAAT considering the terrain in between systems.

#### 4. Licensing in Mexican and Canadian Border Areas

Since the 80 "lower" channels are not available in the Canadian area, the FCC needs to permit inter-category sharing for the incumbent, traditional SMR providers expansion when channels are available.

Jan. 4, 1995

## B. RIGHTS AND OBLIGATIONS OF MTA LICENSEES

### 1. Operational Flexibility

Incumbent SMR licensees are NOT required to re-locate by re-tuning their SMR systems which is a costly process and needs through engineering of frequency spacing to see if the new channels will have no problem like the incumbent channels.

### 2. Treatment of Incumbent Systems

Re-tuning of incumbent SMR systems must be done at the preference of the incumbent and will cost at least \$6,000 per frequency in small system changes up to \$10,000 per frequency for large system changes. We can provide our calculations to justify these prices.

### 3. Co-Channel Interference Protection

- a. We agree to keep 40dB protection.
- b. We agree to maintain 22dBuV/m to adjacent MTA or other licensee.

### 4. Emission Masks

Technology is expanding so rapidly that consideration is needed for the developing technology, like frequency-hopping and spread spectrum.

## C. CONSTRUCTION REQUIREMENTS

We mostly agree with the recommendations. Our traditional SMR systems currently serve 95% of our BTA. We do not like the present FCC practice that grants to wide area ESMRs licenses a 4 year waiver upon their request of the 1 year construction and therefore not constructing and operating any system for the 4 years of the waiver.

## D. SMRs ON GENERAL CATEGORY CHANNELS & INTER-CATEGORY SHARING

We do NOT agree on the Canadian border area where there are NO "lower" 80 channels, and that no use will be made of available inter-category channels. A solution would be to auction only 100 of the 200 channels to the top 2 bidders.

## E. LICENSING MECHANISM FOR 800 MHz SMR SERVICE

### 1. Application Procedures

Licensing by MTA is NOT considering incumbent systems, since each MTA includes several BTA or major cities that are individual market areas.

- a. Initial Eligibility. Agree.
- b. Application Procedures for MTA Licenses. Agree.
  - (1) Initial Applications.
  - (2) Processing and Procedural Rules.
  - (3) Amendments and Modification Applications.
  - (4) Petitions to Deny.
  - (5) Subsequent Applications.

Jan. 4, 1995

c. Application Procedures for Local SMR Channels

Agree. We see an equal playing field when the FCC gives consideration to applications by site-specific or area-specific. In our area the 2 largest cities of the MTA are Buffalo and Rochester, which are definitely separate market areas.

- (1) Initial Applications.
- (2) Processing and Procedural Rules.
- (3) Amendments and Modification Applications.
- (4) Petitions to Deny.

2. Regulatory Classification of Licensees

We strongly DISAGREE. Our businesses; GBRS, AMC and LRC; are private dispatch companies that provide dispatch and also inter-connect service to existing dispatch customers that is limited to the restricted area of the local telephone area. It is not like cellular, because only a wide-area ESMR is like cellular with low power sites and frequency re-use. We are a Private Mobile Radio Service (PMRS) provider with restricted inter-connect service. Most users with inter-connect have Push-To-Talk (PTT) radio equipment rather than full-duplex radio equipment, as is cellular.

F. COMPETITIVE BIDDING ISSUES

1. Competitive Bidding Design

a. General Competitive Bidding Principles

Agree, if auctions are permitted.

b. Competitive Bidding Methodology for 800 MHz SMR licenses

The FCC should impose a performance bond of \$5,000.00 per channel for the 5 year term of the license to ensure the auctionee will construct and operate the FCC grant over the term of the license. An additional penalty should be imposed for falsifying reports and status to FCC with mandatory 6 month imprisonment.

(1) MTA Licenses. Agree, if auctions are permitted.

(2) Local Licenses

We DISAGREE that one single round of auctions in sealed bid would be fair, and suggest that at least two rounds be done with 30 days interval.

2. Procedural, Payment and Penalty Issues

a. Upfront Payments. Agree with minimum \$2,500.

b. Down Payment and Full Payment for Licenses Awarded by Competitive Bidding. Agree.

c. Bid Withdrawal, Default, and Disqualification. Agree.

Jan. 4, 1995

### 3. Regulatory Safeguards

- a. Unjust Enrichment Provisions. Agree to 3 year ownership.
- b. Performance Requirements. Agree.

FCC should impose a performance bond of \$5,000.00 per channel for the 5 year term of the license to ensure the auctionee will construct and operate the grant over the term of the license. An additional penalty will be imposed for falsifying reports and status to FCC with mandatory 6 month imprisonment.

- c. Rules Prohibiting Collusion.

FCC needs to ensure that wide-area ESMRs operators, consolidated or not, will not combine their acquisitions by auction. Case in point would be high bidders of NEXTEL, Dial Page, One-Comm, Powerfone and Pittencrieff.

### 4. Treatment of Designated Entities

- a. Introduction.
- b. Businesses Owned by Women and Minorities. Agree.
- c. Small Businesses.

(1) Specific Special Provisions. We request financing of auction 80% be paid over the 5 years of the license. We believe that the 3 year period for unjust also apply to small businesses.

(2) Eligibility. We DISAGREE with definition of small business sales of average under \$40 million over 3 years but use the US Chamber of Commerce standard for retail/service companies of less than \$5.5 million annually.

- d. Rural Telephone Companies. No comment.
- e. Additional Special Provisions. We have an opinion that 80% of all Two-way Radio Sales and Service companies are small businesses that struggle with capital investment for this new technology emerging of wide-area ESMR service. Most companies will have less than \$500,000 assets and revenue under \$2 million.

Jan. 4, 1995

### III. CONCLUSION

GBRS disagrees that auctions should be conducted on spectrum that already has full incumbent SMR and ESMR use in the top 150 cities of the USA. The approach to auction by MTA would better be served by BTA since several large cities of separate market areas are within each MTA, if auctions indeed are permitted.

The problem in the 800 MHz band is speculation by opportunists who will sell their FCC license and not build out their FCC license grants. A solution will be to impose a \$5,000.00 performance bond valid for the 5 years of the FCC license payable to the FCC if they do not construct and/or operate their FCC grant. An additional solution would be to impose a mandatory prison sentence of 6 months for falsifying reports and status to the FCC of the license.

Wide-area ESMR operators, namely NEXTEL, want an equal playing field with cellular who each operator has 660 analog channels with radio-telephone service. NEXTEL is implementing digital TDMA on 800 MHz channels that provide 6 channels for 1 analog channel. So if the FCC only auctions 100 channels then an equal playing field will exist for cellular, wide-area ESMR and tradition SMR operators. Only 100 channels will be auctioned leaving 100 channels for traditional SMRs and wide-area ESMRs will have 600 digital channels to compete with cellular.

Wide-area ESMRs want to re-farm existing 800 MHz SMR channels into MTA territorial grants on a too-fast timetable, and to not allow existing users to have adequate time use of their radio investment in the traditional 800 MHz SMR service. The FCC should consider slowing down this rapid pace like the re-farming time scale of 6 or 10 years in upcoming re-farming of the spectrum below 800 MHz.

WHEREFORE, THE PREMISES CONSIDERED, Genesee Business Radio Systems, Inc. respectfully submit these Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

GENESEE BUSINESS RADIO SYSTEMS, INC.

By: 

Duncan C. Kennedy, III  
President